United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 17-0121**
	)	**Issued: April 21, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 27, 2016 appellant, through counsel, filed a timely appeal from a September 12, 2016 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a right wrist condition causally related to the accepted August 10, 2015 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 12, 2015 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2015, he injured his right wrist as a result of climbing onto a flatbed tow truck in order to retrieve mail from a broken-down mail delivery vehicle. He noted that he did not slip or fall. A supervisor noted that no medical reports had been received to support the claim and denied knowledge of the facts surrounding appellant's claimed injury.

By letter dated September 1, 2015, OWCP advised appellant that the evidence of record was insufficient to support his claim. It noted that he had not submitted any medical evidence in support of his claim. OWCP afforded appellant 30 days to submit additional evidence.

In support of his claim, appellant submitted a "return to work" note, signed by a nurse practitioner. He also submitted several reports of physical limitations from Dr. Curtis Crimmins, a Board-certified hand surgeon, however, these reports did not contain diagnoses.

By decision dated October 5, 2015, OWCP denied appellant's claim for compensation. It found that the incident occurred as alleged, but he failed to submit medical evidence containing a medical diagnosis from a qualified physician in connection with the events of August 10, 2015.

On October 13, 2015 OWCP received a number of reports from Dr. Crimmins.

In a report dated August 12, 2015, Dr. Crimmins stated an impression of acute onset right wrist pain with heavy load and extension. He gave appellant a splint and recommended blood work to determine whether there was an inflammatory component to his condition.

On August 20, 2015 Dr. Crimmins reported that appellant's blood test was normal. He noted that he recommended appellant undergo a magnetic resonance imaging (MRI) scan. Dr. Crimmins thereafter related that it appeared appellant had a combination of both underlying scaphotrapezotrapezoidal (STT) joint arthrosis and flexor carpi radialis (FCR) tendinitis.

In a report dated August 27, 2015, Dr. Crimmins reviewed a right wrist MRI scan of appellant and noted that it revealed severe arthrosis of the STT joint with edema in the scaphoid trapezium and trapezoid bones. He also explained that he recommended that appellant proceed with STT joint arthrodesis.

On September 24, 2015 Dr. Crimmins noted that appellant had returned for a follow up for his wrist fusion, noting that a cast had been fabricated for strict immobilization.

In a statement dated October 25, 2015, appellant requested an oral hearing before an OWCP hearing representative. He noted that, at the time of his injury, a diagnosis was not readily available due to immense swelling and that the diagnosis had only been made after his MRI scan.

The hearing was held on June 29, 2016. At the hearing, the hearing representative stated that Dr. Crimmins' reports did not contain a sufficient explanation of causation or aggravation of appellant's condition. Appellant noted that the surgery on his wrist had worsened his condition

because two of the three inserted screws were loose. The hearing representative kept the record open for 30 days for the submission of additional evidence.

On July 7, 2016 Dr. Crimmins noted that "[Appellant] and I had a lengthy discussion regarding the onset of his wrist pain. He was climbing up onto a flatbed tow truck when he hyperextended his wrist and had an onset of pain and swelling. It did not resolve over time. [Appellant] eventually underwent arthrodesis of his STT joint. [He] does remark that he was completely asymptomatic prior to climbing up onto the flatbed truck. It does appear that [appellant's] reported work injury significantly aggravated arthrosis of his STT joint. This opinion is given to a reasonable degree of medical probability."

By decision dated September 12, 2016, the hearing representative denied appellant's claim finding that Dr. Crimmins' medical opinion on causation was not sufficiently rationalized.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[4] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his condition relates to the employment incident.[6]

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] Causal relationship is a

[3] *Supra* note 2.

[4] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[7] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10]

ANALYSIS

Appellant alleged that on August 10, 2015, he sustained a wrist injury as a result of climbing onto a tow truck, to retrieve mail from a broken-down postal vehicle. OWCP accepted that the incident occurred as alleged.

The Board finds that appellant has not submitted medical evidence sufficient to establish that the August 10, 2015 incident caused or aggravated his diagnosed severe arthrosis of the STT joint with edema in the scaphoid trapezium and trapezoid bones and FCR tendinitis.

On July 7, 2016 Dr. Crimmins noted that appellant was climbing up onto a flatbed tow truck when he hyperextended his wrist and had an onset of pain and swelling, noting that it did not resolve over time and appellant eventually underwent arthrodesis of his STT joint. He explained, "[Appellant] does remark that he was completely asymptomatic prior to climbing up onto the flatbed truck. It does appear that his reported work injury significantly aggravated arthrosis of his STT joint. This opinion is given to a reasonable degree of medical probability."

The Board has held that a medical opinion on the issue of causation or aggravation of a condition that is based solely on the observation that a claimant was asymptomatic before the injury is insufficient, by itself, to establish a causal relationship between the injury and the work-related event.[11] Dr. Crimmins' opinion lacks a physiologic explanation of how the August 10, 2015 incident caused or aggravated appellant's claimed conditions. As he did not provide a reasoned explanation of how the specific employment incident of August 10, 2015 caused or aggravated appellant's right wrist condition, his opinion is of limited probative value.[12]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment

[8] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[9] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[10] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[12] *See S.M.*, Docket No. 16-0593 (issued February 24, 2017).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[13]

Appellant did not submit a clear and well-rationalized opinion from a physician causally relating his right wrist condition to the incident of August 10, 2015. As such, the Board finds that he failed to submit evidence sufficient to establish that his right wrist condition was causally related to the accepted August 10, 2015 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his right wrist condition was causally related to the accepted August 10, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2016 is affirmed.

Issued: April 21, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[13] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).